TESTIMONY
OF
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ASSOCIATE DEPUTY SECRETARY
DEPARTMENT OF THE INTERIOR

BEFORE THE COMMITTEE ON RESROURCES
U.S. HOUSE OF REPRESENTATIVES

ON

H.R. 4893, TO AMEND SECTION 20 OF THE INDIAN GAMING REGULATORY ACT TO RESTRICT OFF-RESERVATION GAMING

March 15, 2006

Good morning, Mr. Chairman and members of the Committee. My name is James Cason, and I am the Associate Deputy Secretary at the Department of the Interior. I am accompanied by George Skibine, the Acting Deputy Assistant Secretary – Indian Affairs for Policy and Economic Development at the Department of the Interior. I am pleased to be here today on the Department's behalf to speak to some of the issues raised by H.R. 4893, a bill to amend Section 20 of the Indian Gaming Regulatory Act (IGRA) to restrict off-reservation gaming.

The Administration has not yet determined a position on H.R. 4893, which was introduced just last week on March 8, 2006. The bill modifies the current law in significant ways, and we will need time to assess the implications of these proposed changes. As noted below, however, there are some provisions in the bill that raise important issues to be addressed.

H.R. 4893 would eliminate the so-called "two-part determination" exception contained in Section 20(b)(1)(A) and would eliminate the "settlement of a land claim" exception contained in Section 20(b)(1)(B)(i). The bill would also modify the exceptions contained in Section 20(b)(1)(B)(ii) and (iii) by imposing additional requirements before gaming can be authorized on land taken into trust for restored, newly-recognized, or landless tribes. The bill would add a new subsection (e) to Section 20 to permit an Indian tribe to host one or more other Indian tribes to participate in gaming activities on the host tribe's reservation. Finally, H.R. 4893 would add a new subsection (f) to prohibit tribes from conducting gaming outside of a State in which the tribe has its reservation as of the date of enactment. The only exception would be for tribes that have contiguous land to that reservation in another State.

Nearly twenty years ago, Congress enacted IGRA as a tool to promote tribal economic development and self-sufficiency. Certainly, Congress' vision has been realized, and gaming has enabled well over 200 Indian tribes to generate their own revenue and reduce their reliance on Federal funds to implement a variety of tribal economic initiatives in the areas of health, housing, education, and other government services. Consistent with IGRA, the Department supports the right of Indian tribes to engage in gaming activities for the purpose of developing strong tribal economies.

The success of Indian gaming in general has had the perhaps unintended consequence of fostering proposals for Indian gaming facilities on off-reservation lands, often near interstate highways or urban areas, and sometimes in states where the tribe is not presently located. Currently, the Department has identified twenty-three pending applications to take off-reservation land into trust for gaming under the exceptions contained in Section 20, and we are aware that there are numerous other proposals in the making. The Department has raised concerns in the past regarding the scope of the exceptions contained in Section 20, and we support the efforts of this Committee to address some of these issues. For instance, we

agree that it makes sense to require a tribe to have a historical nexus to the area where the land for gaming purposes is located, and to extend the analysis of detriment to the surrounding community and a requirement to negotiate inter-governmental agreements for the purpose of mitigating direct impacts.

However, the bill would also impose some additional requirements on restored, newly recognized, and landless tribes that could effectively stifle any opportunities these tribes may have to engage in gaming activities under IGRA. The bill would also grant veto power to State legislatures and nearby tribes located within 75 miles of a proposed acquisition, provisions that may not be necessary to achieve the intended goal of the legislation. As you know, since IGRA was enacted, only three off-reservation casinos have been approved pursuant to the current two-part determination contained in Section 20(b)(1)(A). Under current law, tribes can chose to submit an application for a two-part determination at any location, and can seek out willing communities. That will not be the case for restored, newly recognized and landless tribes if this bill becomes law, for these tribes will have to stay in an area where they have historical ties. H.R. 4893 would thus make the above process more difficult for newly recognized, restored, or landless tribes by requiring the state legislature and nearby tribes to concur, in essence adding a veto power.

Subparagraph (E) requires the tribal applicant to pay for an advisory referendum, which could be a problem for restored, newly recognized or landless tribes. As a general proposition, these tribes have very limited financial resources, and thus would not be in a position to fund the cost of a referendum unless they are sponsored by a wealthy developer. This provision could force such tribes to rely on the financial resources of third parties.

Finally, a new subsection 20(e) proposed in the bill allows for the creation of tribal partnerships for class II and class III gaming development. We agree with the purpose of this subsection, but would like to work with the Committee on certain aspects, such as liability, sovereignty, jurisdictional, and agreement approval issues.

This concludes my statement. I will be pleased to answer any questions the Committee may have. Thank you.